U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Vermont Service Center Date: 07 NOV 2001

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is a biotechnology/pharmaceutical supplier. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a senior scientist. The director determined that the petitioner had not established the significance of the beneficiary's research, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, prior counsel argued that the beneficiary was eligible for classification as an outstanding researcher and that the director erred in issuing a "cursory" decision.

The Administrative Appeals Office (AAO), in behalf of the Associate Commissioner, dismissed the appeal, concluding that the petitioner had not established that the beneficiary met at least two of the criteria discussed below.

On motion, the petitioner[1] attempts to establish that the beneficiary meets two criteria.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A)through (C):
>
> > (B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien is recognized internationally as outstanding in a specific academic area,
> > >
> > > (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
> > >
> > > (iii) the alien seeks to enter the United States --

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[1] The motion requests that all correspondence be sent to the beneficiary. 8 C.F.R. 103.3(a)(2)(x), however, requires that we send our decision to the petitioner, as the beneficiary has no standing in this matter. See 8 C.F.R. 103.3(a)(1)(iii)(B). As the petitioner's signature stamp appears on the motion we will consider the motion filed by the petitioner, the only party with standing to do so.

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(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on April 14, 1998 to classify the beneficiary as an outstanding researcher in the field of chemistry. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of chemistry as of April 14, 1998, and that the beneficiary's work has been recognized internationally within the field of chemistry as outstanding. The beneficiary obtained his Ph.D. on August 15, 1997 and began working for the petitioner shortly after that date. Thus, the beneficiary does not have three years of experience after obtaining his degree, although it is alleged by his references that his research while a student was recognized as outstanding by the academic field.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the beneficiary must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The AAO discussed the following criteria.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field

The AAO concluded that since the award won by the beneficiary was limited to young scientists, it could not be considered evidence of international recognition. The petitioner does not challenge this determination on motion.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members

The AAO concluded that the organizations to which the beneficiary belongs did not require outstanding achievements of their members. The petitioner does not challenge this determination on motion.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation

The AAO concluded that citations of the beneficiary's articles could not be considered published material about the beneficiary's work. The petitioner does not challenge this determination on motion.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field

The AAO noted that the beneficiary had been invited to participate as a "referee" for the journal *Organometallics*, published by the American Chemical Society. Thus, as noted by the petitioner on motion, the AAO accepted that the beneficiary met this criterion. Review of the invitation letter, however, reveals that this determination was in error. Each criterion must be examined in terms of whether the evidence submitted to satisfy the criterion is evidence of international recognition. The letter is from an associate editor and provides that the invitation is based on the beneficiary's "significant publications and expertise in the field of organometallic chemistry" Closer review, however, reveals that the author of the letter is Dr. Lanny Liebeskind, the beneficiary's advisor and collaborator. An invitation to review journal articles by one's own advisor cannot be considered evidence of international recognition.

Evidence of the alien's original scientific or scholarly research contributions to the academic field

The AAO noted that the reference letters submitted as evidence of the beneficiary's contributions were nearly all from collaborators and, thus, could not be considered evidence of international recognition. On motion, the petitioner submits new evidence in an attempt to satisfy this criterion. Specifically, the petitioner submits a patent application filed August 11, 1999, a comment from an expert who reviewed the beneficiary's articles for publication, a list of citations of the beneficiary's work since the petition was filed, and three new articles authored by the beneficiary. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after

the beneficiary becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Thus, the patent application, new citations, and new articles cannot be considered as evidence of the beneficiary's past contributions at the time of filing the petition. Finally, all articles published in peer-reviewed journals are reviewed for originality and importance prior to publication. There would be little point in publishing unoriginal research. While it is impressive that the reviewer rated the article so well, it is simply not evidence that the beneficiary has gained international recognition for his contributions.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field

The AAO acknowledged that the beneficiary had authored published articles. The AAO concluded, however, that this was not evidence of international recognition because the petitioner had not demonstrated that the journals had an international circulation. On motion, the petitioner points to a letter from the marketing manager of *The Journal of Organic Chemistry* which attests to the journal's international circulation. Thus, the petitioner has overcome the AAO's stated concern.

As stated above, however, each criterion must be evaluated as to whether the evidence demonstrates international recognition. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

At the time of filing, the beneficiary had authored nine articles (including one abstract), six of which had been published, the remaining three were listed as "to be submitted." Two of his Chinese articles were cited twice, and another article was cited once. In response to a request for additional documentation, the petitioner submitted evidence that the beneficiary's 1994 article was cited four times. The evidence of additional citations on motion is not evidence of the beneficiary's international recognition at the time of filing. It remains, four citations, the most any of his articles had been cited at the time of filing, is extremely minimal. Moreover, the petitioner only submitted the title page of one article, which reflects that the citation was not a self-citation, but one by an independent researcher. It is unknown, however, whether the remaining three citations, evidenced only by the pages on which the citations appear, were merely self-citations by one of the beneficiary's co-authors.

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing some degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to an

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international reputation as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.